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OCT 24 2000

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

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CALIFORNIA PRO-LIFE COUNCIL, INC.,

Plaintiff,

v.

KAREN GETMAN, et al.,

Defendants.

NO. CIV. S-00-1698 FCD/GGH

MEMORANDUM AND ORDER

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Plaintiff in this action is the California Pro-Life Council ("CPLC"). Defendants are: Bill Lockyer, Attorney General of the State of California; Karen Getman, Chairman of the California Fair Political Practices Commission ("FPPC"); and William Deaver, Kathleen Makel, Carol Scott, and Gordona Swanson, members of the FPPC.[1] The essence of CPLC's Amended Verified ("AVC") Complaint

[1] The original complaint also named Jan Scully, District Attorney of Sacramento in her official capacity and as a representative of a class of district attorneys in the State of California, and Samuel L. Jackson in his official capacity as City Attorney of Sacramento and as a representative of a class of city attorneys in the State of California. These defendants have since been dismissed.

is that certain provisions of the California Political Reform Act ("PRA"), Cal. Gov. Code §§ 82031 and 82013(a) and (b), and its implementing regulations, Cal. Code Regs. tit. 2, §§ 18225(b) and 18215(b), violate CPLC's and other organizations' First and Fourteenth Amendment[2] rights because they subject them to reporting requirements for mere "issue advocacy."[3]

Defendants move to dismiss the first through sixth and tenth causes of action for lack of subject matter jurisdiction, Fed. R. Civ. P. 12(b)(1), or alternatively, to dismiss the second, fourth, and sixth causes of action for failure to state a claim, Fed. R. Civ. P. 12(b)(6). For the reasons set forth below, the motion is granted in part and denied in part.

FACTUAL BACKGROUND

1. **CPLC**

CPLC is a non-profit corporation. Its corporate purpose as stated in its articles of incorporation is "to promote the social welfare and the protection of all human life." To further its purpose, CPLC spends money for various types of communications to the general public in which it discusses public issues that are important to it. The money for these communications comes from its general treasury. Among CPLC's communications are "voter guides." The voter guides disseminated by CPLC in the past addressed both candidates and ballot measure initiatives. They reported the positions of seemingly all candidates running for

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[2] The First Amendment is made applicable to the states by the Fourteenth Amendment.

[3] CPLC does not challenge the reporting requirements themselves.

office in California on issues concerning abortion and/or physician-assisted suicide and urged readers to vote a certain way on ballot measure initiatives, e.g. "Vote **YES** on Prop. 3." With respect to future communications, CPLC has proffered a prototype of the voter guide it intends to publish prior to the November 2000 election. Consistent with its past voter guides, this voter guide reports the positions of seemingly all candidates running for office in California on issues concerning abortion and/or physician-assisted suicide. It does not, however, mention any ballot measure initiatives.

2. The PRA

The PRA was enacted by initiative measure (Proposition 9) in 1974, and took effect in 1975. One of its stated purposes is the full and truthful disclosure of receipts and expenditures in election campaigns "in order that the voters may be fully informed and improper practices may be inhibited." Cal. Gov. Code § 81002(a). Accordingly, organizations deemed "independent expenditure committees" and/or "recipient committees" are required to make certain disclosures concerning, among other things, their expenditures and contributions.

Under the PRA, a "committee" includes "any person or combination of persons who directly or indirectly . . . (a) Receives contributions totaling one thousand dollars ($1,000) or more in a calendar year [or] (b) Makes independent expenditures totaling one thousand dollars ($1,000) or more in a calendar year." Cal. Gov. Code § 82013(a),(b).

An "independent expenditure" is defined as:

an expenditure made by any person in connection with a

> communication which expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage or defeat of a clearly identified measure, or taken as a whole and in context, unambiguously urges a particular result in an election but which is not made to or at the behest of the affected candidate or committee.

Id. § 82031. The implementing regulations, Section 18225(b) of Title 2 of the California Code of Regulations, similarly provides that:

> [a] communication "expressly advocates" the nomination, election or defeat of a candidate or the qualification, passage or defeat of a measure if it contains express words of advocacy such as "vote for," "elect," "support," "cast your ballot," "vote against," "defeat," "reject," "sign petitions for" or otherwise refers to a clearly identified candidate or measure so that the communication, taken as a whole, unambiguously urges a particular result in an election.

Thus, an organization that spends over $1000 in a calendar year in connection with such a communication is an "independent expenditure committee" and must file a campaign statement for the six month period in which it made the expenditure. Cal. Gov. Code § 84200(b). The statement must include the identity, address, nature and interest of the filer, identify the expenditures and payees, and provide certain cumulative information on other political expenditures, if any. See id. § 84211.

A "contribution" is "any payment made for political purposes for which full and adequate consideration is not made to the donor." 2 Cal. Code. Reg. § 18215(a). If the payment is made to an organization other than a candidate or committee, it will be a "political contribution" if "at the time of making the payment, the donor knows or has reason to know that the payment, or funds with which the payment will be commingled, will be used to make

contributions or expenditures [within the meaning of the PRA]." Id. § 18215(b)(1). A donor is presumed not to know that his or her payment will be used for political purposes unless the donee organization has made political expenditures or contributions of at least $1,000 in the aggregate in the year of the donation or the preceding four years. An organization is considered a "recipient committee" within the meaning of Cal. Gov. Code § 82013(a) when it receives $1,000 or more in political contributions in a calendar year. In addition to fulfilling the reporting obligations of an "independent expenditure committee," a "recipient committee" must (1) have a treasurer, who is responsible for keeping records used to prepare and support campaign statements, (2) file a statement of organization with the Secretary of State, (3) file semi-annual reports, and (4) notify "major donors" of their potential need to file a report.

3. CPLC's Contentions

In Count 1 of its AVC, CPLC contends that Cal. Gov. Code § 82031 is unconstitutional on its face because its definition of "independent expenditure" extends beyond express advocacy of candidates and includes "communications that simply discuss candidates," thereby subjecting organizations such as CPLC to "onerous reporting requirements," for engaging in mere "issue advocacy" in violation of its First Amendment rights. AVC ¶¶ 66-69.

In Count 2, CPLC similarly contends that Cal. Gov. Code § 82031 is unconstitutional on its face because its definition of "independent expenditure" includes ballot measure advocacy. CPLC argues that ballot measure advocacy of any kind, including

express ballot measure advocacy, constitutes "pure issue advocacy" and cannot be regulated. CPLC alternatively argues that even if certain ballot measure initiative advocacy can be regulated, Cal. Gov. Code § 82031 is unconstitutional on its face because it extends beyond express ballot measure advocacy and includes the mere discussion of ballot measure initiatives. Id. ¶¶ 80-86.

In Counts 3 and 4, CPLC contends that Cal. Code Regs. tit. 2, § 18225(b) which defines "expenditure," is unconstitutional on its face for the same reasons that it contends Cal. Gov. Code § 82031 is unconstitutional. AVC ¶¶ 95-98, 109-115.

In Count 5, CPLC contends that both Cal. Gov. Code § 82031 and Cal. Code Regs. tit. 2, § 18225(b) are void for vagueness because ordinary people cannot understand what constitutes an "independent expenditure." AVC ¶¶ 117-18.

In Count 6, CPLC contends that Cal. Gov. Code § 82013(a) and (b) are unconstitutional on their face and as applied to CPLC because their respective definitions of "independent expenditure committee" and "recipient committee" require individuals and organizations which engage in pure issue advocacy to suffer "burdensome record keeping, reporting and notice requirements." AVC ¶¶ 128-129.[4]

In Count 10, CPLC contends that Cal. Gov. Code § 82013(a)

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[4] In Counts VII, VIII and IX, CPLC contends that Cal. Gov. Code § 82013(a) and (b) and Cal. Code Regs. tit. 2, § 18215(b) are unconstitutional on their face and as applied to CPLC because they regulate organizations without regard to their major purpose. Those counts are not at issue herein, but are addressed in the order denying CPLC's motion for preliminary injunction filed concurrently herewith.

and (b) and Cal. Code Regs. tit. 2, § 18215(b) are void for vagueness because it is unclear what communications are encompassed within "independent expenditure," and thus, ordinary people cannot understand whether their organization is deemed a committee and thus subject to the reporting requirements referenced above. AVC ¶¶ 163-64.

STANDARD

1. 12(b)(1)

Federal Rule of Civil Procedure 12(b)(1) allows a defendant to attack a pleading for lack of subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1). The court presumes a lack of subject matter jurisdiction until it is proved otherwise. See Kokkonen v. Guardian Life Ins. Co. of America, 511 U.S. 375, 377 (1994); Stock West, Inc. v. Confederated Tribes, 873 F.2d 1221, 1225 (9th Cir. 1989). The plaintiff bears the burden of proof that jurisdiction exists. A complaint will be dismissed for lack of subject matter jurisdiction if (1) the cause does not "arise under" any federal law or the United States Constitution, (2) there is no case or controversy within the meaning of that constitutional term, or (3) the cause is not one described by any jurisdictional statute. Baker v. Carr, 369 U.S. 186, 198 (1962).

2. 12(b)(6)

A complaint will not be dismissed under Fed. R. Civ. P. 12(b)(6) "unless it appears beyond doubt that plaintiff can prove no set of facts in support of his [or her] claim that would entitle him [or her] to relief." Yamaguchi v. Department of the Air Force, 109 F.3d 1475, 1480 (9th Cir. 1997)(quoting Lewis v. Telephone Employees Credit Union, 87 F.3d 1537, 1545 (9th Cir.

1996)). "All allegations of material fact are taken as true and construed in the light most favorable to the nonmoving party." Cahill v. Liberty Mut. Ins. Co., 80 F.3d 336, 337-38 (9th Cir. 1996).

ANALYSIS

1. Standing

Defendants contend that CPLC lacks standing to challenge the aforementioned provisions of the PRA and its implementing regulations insofar as they regulate speech concerning candidates because CPLC has failed to establish that it has or will suffer any injury as a result of these provisions. Accordingly, defendants' move to dismiss Counts 1-6 and 10 of the AVC for lack of subject matter jurisdiction.

The constitutional minimum necessary to establish standing requires CPLC to show that: (1) it suffered an injury in fact--an invasion of a legally protected interest which is "concrete and particularized and actual or imminent;" (2) there exists a causal connection between the injury and the conduct complained of; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992).

CPLC argues that it has suffered an injury-in-fact based on its fear of prosecution for continuing to make communications that discuss candidates. CPLC asserts that its fear arises from Cal. Gov. Code § 82031 and Cal. Code Regs. tit. 2, § 18225(b)(2), and the past history of enforcement as evidenced by FPPC advisory letters. Attached to CPLC's AVC are copies of past voter guides as well as a prototype of the voter guide it intends to publish

before the November 2000 election. According to CPLC, these voter guides constitute "independent expenditures," and thus, it fears prosecution for its past failure to adhere to the PRA's reporting requirements and its intent not to adhere to them in the future.

In evaluating the genuineness of a claimed threat of prosecution, the court must consider "whether [CPLC has] articulated a 'concrete plan' to violate the law in question, whether the prosecuting authorities have communicated a specific warning or threat to initiate proceedings, and the history of past prosecution or enforcement under the challenged statute." Thomas v. Anchorage Equal Rights Comm'n, 220 F.3d 1134, 1139 (9th Cir. 2000) (citing San Diego County Gun Rights Comm. v. Reno, 98 F.3d 1121, 1126-27 (9th Cir. 1996)).

CPLC contends that a genuine, imminent threat of prosecution arises from its showing of a concrete plan to violate the law by publishing its proffered voter guide. CPLC further contends that FPPC's past interpretation of the statute as evidenced by its advisory letters presents a credible threat of enforcement, and that these same advisory letters establish a history of enforcement.[5]

Defendants have represented both in their papers and in open court that the communications concerning candidates contained in

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[5] As a preliminary matter, it should be noted that nothing in the PRA subjects CPLC to prosecution for *publishing* its voter guides. Rather, the potential for prosecution arises only if: (1) CPLC publishes its voter guide; (2) CPLC is found to be an "independent expenditure committee" or "recipient committee;" and (3) CPLC fails to comply with the applicable reporting requirements.

CPLC's past and proposed future voter guides do not trigger the PRA's reporting requirements because the communications are purely informational. See, e.g., Mot. to Dismiss at 3, 9. CPCL cannot establish a credible threat of prosecution where the agencies charged with enforcement represent that CPLC's proposed conduct will not trigger the PRA's disclosure requirements, and thus, cannot lead to prosecution for failure to comply with the same.[6]

Contrary to CPLC's assertions, FPPC's advisory letters do not give rise to a credible threat of enforcement or establish a history of enforcement. Indeed, they do the opposite. In 1987, the Christian Resource Press requested advice as to whether it was required to file campaign disclosure statements reporting payments it received and made in connection with its "Christian Voters Guide." See Llewellyn Advice Letter, 1987 WL 419848 (Cal. Fair Pol. Prac. Comm'n) at *1. The Christian Voters Guide asked the reader how he/she would vote on four public issues (public funding of abortion, educational vouchers, definition of obscenity and parental consent) and identified how the candidates running for statewide offices had answered those questions. Id. Applying the definition of "expenditure" contained in Cal. Code Regs. tit. 2, 18225(b), the FPPC advised that the Christian Resource Press "has no reporting obligation . . . because it has

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[6] It is worth noting that CPLC could have requested the FPPC to issue an opinion or provide advice concerning CPLC's duties under the PRA. At a minimum, CPLC would have been required to provide written advice that would have been "a complete defense in any enforcement proceeding initiated by the commission, and evidence of good faith conduct in any other civil or criminal proceeding." Cal. Gov. Code § 83114.

not received 'contributions' or made 'expenditures' as defined in the Act." Id. The FPPC explained that nothing in the Christian Voters Guide "could be construed as 'expressly advocating' the election or defeat of a particular candidate or measure. Therefor, payments received by the [Christian Resource Press] to publish the "Guide" are not 'contributions' and need not be reported under the Act's campaign disclosure provisions . . . ." Id. at *1.

CPLC's past and future voters guides are identical in all material respects to the voters guide submitted by the Christian Resource Press. Both identify how the various candidates running for statewide offices answered specific questions concerning public issues. Accordingly, the only reasonable inference to be drawn from FPPC's past interpretations is that CPLC will not be prosecuted for the candidate advocacy contained in its past of future voter guides.[7]

CPLC's fear that it may be subject to prosecution for engaging in similar conduct beyond the November 2000 election is unfounded. CPLC does not allege that it intends to make communications different from those attached to its AVC. To the contrary, it alleges that future voter guides "will tabulate candidates' responses and their positions to questions like 'Do you support the legal protection of unborn children?' and 'Do you oppose the use of government funds to pay for abortion?' . . . ."

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[7] None of advisory letters referred to by CPLC involved a voter's guide or came close to approximating the similarities present between the instant case and those present in the Llewelyn letter. Accordingly, those letters do not give rise to a credible threat of prosecution.

AVC ¶ 47. Accordingly, no reasonable expectation exists that CPLC will be subjected to prosecution in the future, beyond the November 2000 election, for failing to adhere to the PRA's reporting requirements.

CPLC correctly notes that "[u]nder the overbreadth doctrine, a plaintiff may challenge an overly-broad statue or regulation by showing that it may inhibit the First Amendment rights of parties not before the court, even if [its] own conduct is not protected." Young v. City of Simi Valley, 216 F.3d 807, 815 (9th Cir. 2000).

> The overbreadth exception to the prudential limits on standing, however, does not affect the rigid constitutional requirement that plaintiffs must demonstrate an injury in fact to invoke a federal court's jurisdiction. Rather, the exception only allows those who have suffered some cognizable injury, but whose conduct may not be protected under the First Amendment, to assert the constitutional rights of others.

Id. (internal quotations and citations omitted). As set forth above, CPLC cannot show that it has suffered or that it reasonably fears that it will suffer an actual injury based on its past or future candidate advocacy. Accordingly, CPLC lacks standing to challenge the subject provisions to the extent they allegedly encompass mere discussion of candidates.

Defendants properly do not challenge CPLC's standing to challenge the regulation of express ballot measure advocacy. CPLC contends that it has refrained from making communications that expressly advocate the passage or defeat of a ballot measure. Self-censorship "[is] a harm that can be realized even without actual prosecution." Virginia v. American Bookseller's

Ass'n, Inc., 484 U.S. 383, 393 (1988).[8]

Accordingly, Counts 1 and 3, which are directed solely to the regulation of communications involving candidates, are dismissed in their entirety. Counts 2, 4, 5, 6, and 10 are dismissed insofar as they are directed to regulation of communications involving candidates and mere discussion of ballot measure initiatives. To the extent Counts 2, 4, 5, 6, and 10 are directed at express ballot measure advocacy, defendants' motion to dismiss for lack of subject matter jurisdiction is denied.

2. Failure To State A Claim

Defendants move to dismiss counts 2, 4, and 6 on the ground that they fail to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). Each of these counts is premised on CPLC's assertion that ballot measure advocacy, including that which expressly advocates the passage or defeat of a ballot measure, constitutes "pure issue advocacy" and cannot be regulated. Because ballot measure advocacy is encompassed within Cal. Gov. Code § 82031 and Cal. Code Regs. tit. 2, § 18225(b), CPLC contends these provisions are unconstitutional on their face (Counts 2 & 4). CPLC further contends that because Cal. Gov. Code § 82013(a) and (b) subject it to burdensome reporting requirements based upon the definitions contained in Cal. Gov. Code § 82031 and Cal. Code Regs. tit. 2, § 18225(b), those

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[8] CPLC has failed to allege that it has suffered any injury stemming from the provisions alleged regulation of communications that merely discuss, but do not expressly advocate, the passage or defeat of, ballot measure initiatives, and accordingly, lacks standing to challenge the aforementioned statutes and regulations on that basis. Moreover, defendants' concede that such advocacy is immune from regulation.

provisions are unconstitutional on their face and as applied to CPLC.

According to CPLC, the Supreme Court's decision in Buckley v. Valeo ("Buckley I") limits regulation of expenditures to "communications that in express terms advocate the election or defeat of a clearly identified *candidate*." Opp'n to Mot. to Dismiss at 11 (quoting Buckley I, 424 U.S. at 79-80 (emphasis added). As defendants point out, Buckley I involved the constitutionality of the Federal Election Campaign Act ("FECA"). Since federal elections do not involve ballot measures, the Court's opinion in Buckley I cannot fairly be construed as having considered ballot measure advocacy, let alone to have held it is exempt from regulation. While neither the Supreme Court nor the Ninth Circuit has expressly held that express ballot measure advocacy may be regulated, each has acknowledged the importance of such regulations in furthering the government's interest in informing the electorate as to their sources of support.

In First Nat'l Bank of Boston v. Belotti, the Supreme Court addressed the constitutionality of a statute that forbade certain expenditures by banks and business corporations for the purpose of influencing the vote on referendum proposals. 435 U.S. 765, 767 (1978). One of the interests asserted by the State as a justification for the prohibition was "the State's interest in sustaining the active role of the individual citizen in the electoral process and thereby preventing diminution of the citizen's confidence in government." Id. at 787. Although the Court acknowledged that the State's interest in preventing corruption and preserving citizens' confidence in government were

important interests, it found those interests were not endangered by corporate participation in discussion of a referendum issue. Id. at 789. In finding the statute unconstitutional, the Court summarily rejected the notion that corporate speech be restricted in order to enhance the relative voice of others. Id. at 790 (quoting Buckley I, 424 U.S. at 48-49). The Court observed that "the people in our democracy are entrusted with the responsibility for judging and evaluating the relative merits of conflicting arguments." Id. at 791. In so noting, however, the Court acknowledged the importance of the source of the argument in judging and evaluating the same. "[The people] may consider, in making their judgment, *the source and credibility of the advocate.*" Id. at 791-92 (emphasis added). The Court further observed:

> Corporate advertising, unlike some methods of participation in political campaigns, is likely to be highly visible. *Identification of the source of advertising may be required as a means of disclosure, so that the people will be able to evaluate the arguments to which they are being subjected.*

Id. at 792 n. 32 (emphasis added) (citing Buckley I, 424 U.S. at 66-67; United States v. Harriss, 347 U.S. 612, 625-26 (1954)).

In Citizens Against Rent Control v. City of Berkeley, the Court considered the constitutionality of an ordinance placing a $250 limit on contributions to committees formed to support or oppose ballot measures. 454 U.S. 290, 299-300 (1981). Although the Court declared the ordinance unconstitutional, in response to arguments that the ordinance was necessary "as a prophylactic measure to make known the identify of supporters and opponents of ballot measures," the Court observed that "[t]he integrity of the

political system will be adequately protected if contributors are identified in a public filing revealing the amounts contributed. . . ." Id. at 298-300.

The Supreme Court recently addressed the constitutionality of campaign disclosure requirements in the context of ballot measure advocacy in Buckley v. American Constitutional Law Foundation, Inc. ("Buckley II"), 525 U.S. 182 (1999). There the Court considered, among other things, the constitutionality of a Colorado statute requiring proponents of an initiative to report the names and addresses of all paid circulators and the amount paid to each circulator. See id. at 186. Although the Court found that these reporting requirements were "no more than tenuously related to the substantial interests disclosure serves," and thus failed "exacting scrutiny," the Court acknowledged the importance of disclosure to the State's "substantial interest" in informing the electorate. Id. at 202-203. Responding to arguments that the reporting requirements were necessary "as a control or check on domination of the initiative process by affluent special interest groups," the Court explained that those interests were adequately protected by remaining disclosure requirements:

> Disclosure of the names of initiative sponsors, and the amounts they have spent gathering support for their initiatives, responds to that substantial interest. Through the disclosure requirements that remain in place, voters are informed of the source and amount of money spent by proponents to get a measure on the ballot; in other words, voters will be told who has proposed a measure, and who has provided funds for its circulation.

Id. (internal citations and quotations omitted). The Court further explained:

> Through less problematic measures, Colorado can and does meet the State's substantial interests in regulating the ballot-initiative process. . . . To inform the public "where [the] money comes from," we reiterate, *the State legitimately requires sponsors of ballot initiatives to disclose who pays petition circulators, and how much.*

Id. at 204-05 (quoting Buckley I, 424 U.S. at 66) (emphasis added).

In finding a state statute forbidding corporations or banks from making contributions to promote or defeat any ballot issue, the Ninth Circuit likewise observed:

> While regulations to insure disclosure of the source of payments or contributions may be enacted, without a showing of a compelling state interest, the complete suppression of expression created by the Montana state is overbroad and impermissible.

C & C Plywood Corp. v. Hanson, 583 F.2d 421, 425 (9th Cir. 1978).

As demonstrated above, both the Supreme Court and Ninth Circuit have recognized the importance of campaign disclosure requirements and have relied on the existence thereof as justifications for their rulings. Accordingly, the court finds that express ballot measure advocacy is not immune from regulation.

CPLC's reliance on McIntyre v. Ohio Elections Comm'n, 514 U.S. 334 (1995), is misplaced. The Court's decision was clearly prefaced on Mrs. McIntyre's status as an independent individual and the small impact, if any, her disclosure would have on the government's asserted interest in aiding the public in evaluating the document's message. Id. at 348-49. Unlike statute at issue in McIntrye, the challenged provisions of the PRA do not prohibit the speaker from speaking. Rather, the PRA may require an organization to make certain disclosures regarding their

expenditures and contributions. Moreover, unlike the statute in McIntrye, the challenged provisions do not pertain to all communications designed to influence voters, but only to those which qualify as "independent expenditures." Most importantly, however, McIntrye dealt with the disclosure of the author *not* the source of its funding. Indeed, the Court expressly distinguished between the two:

> A written election-related document--particularly a leaflet--is often a personally crafted statement of a political viewpoint. Mrs. McIntyre's handbills surely fit that description. As such, identification of the author against her will is particularly intrusive; it reveals unmistakably the content of her thoughts on a controversial issue. *Disclosure of an expenditure and its use, without more, reveals far less information. It may be information that a person prefers to keep secret, and undoubtedly it often gives away something about the spender's political views. Nonetheless, even though money may "talk," its speech is less specific, less personal, and less provocative than a handbill--and as a result, when money supports an unpopular viewpoint it is less likely to precipitate retaliation.*

Id. at 355.

CPLC's contention that the State does not having an interest in informing the electorate of the source of funding for ballot measure initiatives is unfounded. As set forth above, both the Supreme Court and Ninth Circuit have recognized such an interest. Moreover, the State's interest in requiring organizations to provide information concerning their political expenditures and contributions is particularly strong in California.

In the 1998 Primary and General Election Year, more than one quarter of a billion dollars was raised and spent to qualify,

support and oppose ballot measure voted on that year.[9] As defendants correctly note, the initiative process is part of California's legislative process, allowing voters to become lawmakers. Given the large amount of money being spent to support and oppose these legislative campaigns, the State's interest in providing the electorate with information concerning the source of these funds is substantial.

Accordingly, Counts 2, 4, and 6, are dismissed in their entirety.[10]

CONCLUSION

Defendants' motion to dismiss is GRANTED in its entirety as to Counts 1, 2, 3, 4, and 6. Defendants motion to dismiss Counts 5 and 10 is GRANTED to the extent that as they are directed to regulation of communications involving candidates and mere discussion of ballot measure initiatives and is DENIED to the extent they are directed at express ballot measure advocacy.

IT IS SO ORDERED.

DATED: October 24, 2000.

FRANK C. DAMRELL, Jr.
UNITED STATES DISTRICT JUDGE

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[9] Defendants' request for judicial notice of the reports of the Secretary of State attached as exhibits to Robert Leidigh's declaration is granted. See Fed. R. Evid. 201(b); Emrich v. Touche Ross & Co., 846 F.2d 1190, 1198 (9th Cir. 1988)

[10] They are dismissed for lack of standing insofar as they are directed to regulation of communications involving candidates and mere discussion of ballot measure initiatives, and for failure to state a claim insofar as they are directed at express ballot measure advocacy.